

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
RUSSELL J. TRASK,

BAINBRIDGE MARINE SERVICE,
INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 86-156

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of a notice and order of civil penalty of \$500 for outdoor burning allegedly in violation of Section 8.05(1) of respondent's Regulation I came on for hearing before the Board; Lawrence J. Faulk, Chairman and presiding, Wick Dufford, and Judith A. Bendor at Lacey on November 21, 1986. Respondent agency elected a formal hearing in accordance with WAC 371-08-155. Cheri L. Davidson of Barker and Associates officially reported the proceeding.

1 Appellant Bainbridge Marine Service, Inc., appeared and was
2 represented by Russell Trask, Owner. Respondent public agency Puget
3 Sound Air Pollution Control Agency appeared and was represented by its
4 attorney Keith D. McGoffin.

5 Witnesses were sworn and testified. Exhibits were admitted and
6 examined. Argument was heard.

7 From the testimony, evidence, and contentions of the parties the
8 Board makes these

9 FINDINGS OF FACT

10 I

11 The Puget Sound Air Pollution control Agency (PSAPCA) is an
12 activated air pollution control authority under terms of the state's
13 Clean Air Act, empowered to monitor and enforce outdoor open burning
14 codes in a five-county area of mid-Puget Sound.

15 The agency has filed with the Board a certified copy of its
16 Regulation I, and all amendments thereto, of which we take judicial
17 notice.

18 II

19 Russell Trask, is a contractor specializing in waterfront
20 construction doing business as Bainbridge Marine Service, Inc., which
21 is located in Winslow, Washington.

22 III

23 On June 26, 1986, at approximately 2:40 p.m., a PSAPCA inspector,
24 responding to a citizen's complaint, observed an outdoor fire on the
25

1 premises of Bainbridge Marine Service, Inc. on the banks of Eagle
2 Harbor on Bainbridge Island, Washington. The fire was of a pile of
3 planking which the inspector estimated to be approximately 16 feet
4 long by 9 feet high and 10 feet wide.

5 The inspector contacted Mr. Trask who was on the site tending the
6 fire and received his permission to conduct a close-up inspection. On
7 so doing, the inspector could not ascertain whether the pile contained
8 any surface-coated, creosote-containing materials. However, Mr. Trask
9 had no permit to burn. The inspector explained to Mr. Trask that a
10 notice of violation would be issued by PSAPCA.

11 IV

12 On June 26, 1986, notice of Violation No. 20727 was mailed to the
13 appellant. On August 26 1986, notice and order of civil penalty No.
14 6489 for \$500 was issued to appellant for allegedly violating Section
15 8.05(1) of Regulation I. Feeling aggrieved by this action, appellant
16 appealed to this Board on September 6, 1986, and the appeal became our
17 number PCHB No. 86-156.

18 V

19 The fire in question was of planks from an old pier that appellant
20 was replacing. Mr. Trask maintained that the wood was untreated. He
21 also said he had talked to the local fire protection district and the
22 City of Winslow and no objection had been raised to his burning
23 untreated wood.

1 No prior contact was made with PSAPCA and no permit was obtained
2 from it to conduct the open fire.

3 VI

4 Mr. Trask was aware of the existence of PSAPCA and of its program
5 of regulating open burning. On a prior occasion he had been penalized
6 by the agency for an open fire containing treated wood and metal
7 (prohibited materials), which penalty was ultimately reduced to
8 judgment.

9 VII

10 Any Conclusion of Law which is deemed a Finding of Fact is hereby
11 adopted as such.

12 From these Findings the Board comes to these

CONCLUSIONS OF LAW

14 I

5 The Board has jurisdiction over these persons and these matters.
6 Chapters 70.94 and 43.21B RCW.

7 II

8 The Legislature of the State of Washington has enacted the
9 following policy on outdoor fire:

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11 It is the policy of the state to achieve and maintain high
12 levels of air quality and to this end to minimize to the
13 greatest extent reasonably possible the burning of outdoor
14 fires. Consistent with this policy, the legislature declares
15 that such fires should be allowed only a limited basis under
16 strict regulation and close control. RCW 70.94.740.

17 FINAL FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND ORDER
PCHB No. 86-156

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III

The means for implementing the policy of RCW 70.94.470 is outlined in succeeding sections of the statute. RCW 70.94.755 calls for the creation of a program to carry out the limited burning policy through the adoption of regulations. Subject to the provisions of such a program, RCW 70.94.750 allows restricted burning of residential gardening debris and natural residue from land clearing projects.

IV

PSAPCA's Regulation I implements a program for residential and land clearing burning. Beyond this, however, Regulation I, Section 8.05(1) makes it unlawful for any person to cause or allow any outdoor fire other than land clearing burning or residential burning without prior written approval of PSAPCA.

Section 8.05(1) was violated on June 26, 1986, when planks were burned on Mr. Trask's property in the absence of PSAPCA's permission.. The fire did not meet the definition of "land clearing burning" or of "residential burning." Regulation I, Section 1.07(y), (pp).

V

Appellant argues that burning untreated wood does no harm. In this he appears to wish to substitute his judgment for that of the legislature. He also argues that since neither the fire district nor

1 the City of Winslow objected to his fire, it is unfair for PSAPCA to
2 penalize him. There is no evidence that the local entities misled him
3 as to what PSAPCA requires. In addition, given his past contact with
4 PSAPCA, his purported reliance on notification to local authorities to
5 absolve him is entitled to little weight.

6 VI

7 The purpose of the civil penalty is not retribution, but rather to
8 influence the behavior of the perpetrator and to deter violations
9 generally.

10 Considering all the facts and circumstances, we do not regard \$500
11 as an excessive penalty in this instance.

12 This appellant is in a business which involves disposal of debris
13 and has been in business for some time. He should have an awareness
14 of the laws governing outdoor fires. His prior violation further
15 underscores this point. We believe the penalty imposed must be upheld
16 in the interests of the deterrence purposes of the law.

17 Any Finding of Fact hereinafter determined to be a Conclusion of
18 Law is hereby adopted as such.

19 From these conclusions, the Board makes this
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ORDER

Notice and Order of Civil Penalty No. 6489 is affirmed.

DONE this 27th day of February, 1987.

POLLUTION CONTROL HEARINGS BOARD

 2/24/87
LAWRENCE J. FAULK, Chairman


WICK DUFFORD, Member


JUDITH A. BENDOR, Member